

Jasper Jones, *Esq.* and Frances his Wife, Appellants.
John Bennett, *Gent.* and Mary his Wife; Henry Spencer, *Gent.*
and Anne his Wife; William Wade, Francis Leigh *Esq.* Richard Leigh, Jasper Leigh Jones, Thomas Leigh of Farnham, Respondents.
Thomas Wildman, and Dorothea his Wife, Fitz William Plumtree, Sir Thomas Wynn, *Bart.* and William Fawkes.

A N D

The said Francis Leigh, *Esq.* Appellant.
The said John Bennett, and Mary his Wife; Henry Spencer, and Anne his Wife; William Wade, Jasper Jones, and Frances his Wife; Jasper Leigh Jones, Richard Leigh, Thomas Leigh of Farnham, Thomas Wildman, and Dorothea his Wife; Respondents.
Fitz-William Plumtree, Sir Thomas Wynne, and William Fawkes.

The CASE of the said Francis Leigh, *Esq.* one of the Respondents in the Original Appeal, and Appellant in the said Cross Appeal.

SIR John Leigh, late of Addington in the County of Surry, Knight, deceased, was seized of the Reversion and Inheritance in Fee-Simple of the Manor of Addington, and divers Lands and Tenements situate in Addington, Croydon, Farley, Chelsham, and Katerham, in the County of Surry, and of the Manor of East-Wickham, and divers other Lands and Tenements situate in the County of Kent, subject to the Uses and Estates thereof, limited and contained in a Settlement by him made thereof, dated the 19th of December 1684: And, being so seized, by his Will, dated the 2d of September 1690, he confirmed the said Settlement, and thereby declaring that he had then but one Son, and that he was desirous that his Estate of Inheritance might be and continue in the Name of Leigh so long as it pleased Almighty God, he devised the said Reversion and Inheritance thereof to his Brother Woolley Leigh for Life, Remainder to the first and other Sons of the said Woolley Leigh in Tail-Male; and for want of such Issue to Sir Francis Leigh Knight, the Appellant Francis Leigh's Grandfather, and to the right and lawful Heirs of the said Sir Francis Leigh for ever.

Woolley Leigh survived Sir John Leigh, but afterwards died without Issue-Male; and the said Sir Francis Leigh also survived the said Sir John Leigh, the Father, and died in the Year 1711; and left Issue Francis Leigh his Son and Heir, who is also dead; and left Issue two Sons and no more; to wit, the Appellant Francis Leigh his eldest Son, and the Respondent Richard Lee his younger Son.

Sir John Leigh the Son, died the 16th of November 1737, without Issue, whereby, and by virtue of the Will of the said Sir John Leigh the Father, the Appellant Francis Leigh became intituled to all the Manors, Lands, and Premises in the said County of Surry, and to one Moiety of the said Manor, Lands, and Premises in the County of Kent, the same being Gavelkind Lands, and the said Respondent Richard Leigh is entitled to the other Moiety thereof, in case the said Remainder in Fee thereof, devised as aforesaid to Sir Francis Leigh, was not well and effectually barred by the said Sir John Leigh the Son.

Sir John Leigh, the Son, made his Will in Writing, dated the 23d of August 1733, and thereby devised all his said Estates in the Counties of Surry, Kent, and Middlesex, (in case of Failure of Issue of his own Body, and subject to a Rent-Charge to Dame Elizabeth Leigh, then his Wife, since deceased, for her Life, and other Charges therein mentioned) as to one Moiety thereof to the said Francis Leigh, late Father of the said Appellant Francis Leigh for his Life, Remainder to his first and other Sons in Tail-Male, with Remainders over; and as to the other Moiety thereof to the said Frances Jones, Wife of the said Appellant Jasper Jones, and to the Heirs of her Body, with Remainders over: And afterwards, in the Year 1735, the said Sir John Leigh made a Codicil to his said Will, and thereby devised his Estate in the County of Kent to the said Respondent William Wade for the Term of 500 Years.

The said Sir John Leigh the Son, afterwards made another Will in Writing dated, the 30th of January 1736, and he thereby (among other things) devised the Manors of Addington and Thorpe, and all other his Estates in the said County of Surry, to the Respondents Fitz-William Plumtree and Thomas Wildman, and their Heirs in Trust, to raise Monies for Payment of Debts and Legacies; and afterwards as to one Moiety thereof to the Use of the Appellant Francis Leigh for Life, Remainder to his first and other Sons in Tail-Male, Remainder to the said Appellant Frances Jones, the Wife of the other Appellant Jasper Jones, and the Heirs-Male of her Body; and as to the other Moiety thereof, to the Use of the said Appellant Frances Jones, and the Heirs-Male of her Body, Remainder to the Issue-Female of her Body, Remainder to the Respondent Thomas Leigh of Farnham, and the Heirs-Male of his Body, and the said Sir John Leigh, the Son, thereby devised his Estates in the said Counties of Kent and Middlesex, to the said Respondent William Wade and his Heirs.

Afterwards by Lease and Release, dated the 9th and 10th of September 1737, the said Sir John Leigh the Son, settles and is mentioned to convey the said Manors of Addington and Thorpe, and all other his Lands and Hereditaments in the said Counties of Surry and Middlesex, to the said Respondents Sir Thomas Wynne, William Fawkes, and Thomas Wildman, and their Heirs, to the Use of himself for Life Sans-Waste, Remainder to his first and other Sons in Tail-Male, Remainder to his Daughters in Tail; and for want of such Issue, as to one Moiety of the Manors of Addington and Thorpe, and all other the Premises in the County of Surry (charged with an Annuity of Forty Pounds a Year, therein mentioned) to the Use of the Appellant Francis Leigh for his Life, Remainder to Trustees during his Life to preserve contingent Remainders, Remainder to his first and other Sons in Tail-Male, Remainder to the Respondent Richard Leigh for Life, with like Remainder to his first and other Sons in Tail-Male, Remainder as to that Moiety and also the said other Moiety thereof (charged also with the said Annuity of Forty Pounds a Year) to the said Appellant Frances Jones for her Life, Remainder to Trustees during her Life to preserve contingent Remainders, Remainder to Trustees for 500 Years for raising Portions for her Daughters and younger Sons, Remainder to the first and other Sons of the said Appellants Frances Jones in Tail-Male, Remainder to her Daughters in Tail, Remainder to the Respondent Thomas Leigh of Farnham, and his Heirs; and as to the said Estates in the said Counties of Kent and Middlesex (being about Three Hundred Pounds a Year) to the Use of the said William Wade, and his Heirs, with a Power to the said Sir John Leigh, the Son, to revoke and make void all the Uses therein contained, so as such Revocation was made in the Presence of three Persons therein-named, their Executors, Administrators, or Assigns and the usual Power of Leasing; and also a Power to the Trustees after his Death to raise so much Money out of the said Estates by Sale or Mortgage, as would pay all his just Debts at his Death.

The said Sir *John Leigh* the Son, did not revoke the said Indenture of Release, or any of the Uses or Estates therein contained, and upon his Death the Appellants *Francis Leigh*, and *Jasper Jones*, and *Frances* his Wife, entered on the said Estates in the County of *Surry*, and enjoyed the same quietly 'till *Easter Term 1739*, when the said Respondents *Bennett* and his Wife, and *Spencer* and his Wife, exhibited their Bill in *Chancery* against the said Respondents *William Vade*, *Jasper Leigh Jones*, *Richard Leigh*, *Fitzwilliam Pluntree*, *Thomas Wildman*, and *Dorothea* his Wife, *Thomas Leigh*, *John Stalker*, *Sir Thomas Wynne*, *William Fawkes*, and the said several Appellants *Francis Leigh* and *Jasper Jones*, and *Frances* his Wife, setting forth that they the Complainants *Mary* and *Anne* were the Coheirs of the said Sir *John Leigh* the Son, and charging, "That the said Sir *John Leigh* the Son was of an insane Mind, and not capable of knowing or understanding what he did; and that the said Respondent *Vade*, and the Appellant *Francis Leigh*, and the said other Appellants *Jasper Jones* and *Frances* his Wife, or one of them, gave Instructions in what Manner the said Will of 1736, and the said Settlement of 1737 were to be made, and gave Directions under their Hands, or otherwise, to the Respondent *Thomas Wildman*, touching the Drawing thereof, or touching the Disposition of the Estate of the said Sir *John Leigh* the Son, without any Directions or Instructions of the said Sir *John Leigh*: And also, that such Recoveries as were suffered by the said Sir *John Leigh* between his Marriage and his Death, were transacted in the same fraudulent Manner, without any Directions of his, and by Attorney, if at all: And that the said Sir *John Leigh* did not execute any Warrant of Attorney, or did not know the Nature and Effect thereof, nor was in the least sensible what he was about; and prayed that the said Settlement of 1737, and the said Will of 1736 might be set aside, for the great Fraud and Imposition in obtaining the same: Or that the Testimony of the Plaintiffs Witnesses relating thereto might be perpetuated; and that until the Plaintiffs Right could be determined at Law, the said Respondent *William Vade*, and the said Appellants *Francis Leigh* and *Jasper Jones*, and *Frances* his Wife, might be restrained from committing Waste: And that in Case it should appear that the Right and Title of the Plaintiffs was merely at Law, that the Defendants might be restrained from setting up any Incumbrances on the Trial of any Action at Law, brought or to be brought by the Plaintiffs; and that the Defendants might account for the Rents and Profits received by them."

The Appellant *Francis Leigh* attained his Age of Twenty One Years but on the 22d of *August 1737*. and never knew or heard of, either of the said Wills, of the said Sir *John Leigh*, the Son, or of the said Settlement made by him, until after the Death of the said Sir *John Leigh* the Son; but being an entire Stranger to the whole Transaction, and lately come of Age, he did join with the said other Appellants *Jasper Jones*, and *Frances* his Wife, in an Answer and Defence to the said Bill; and did also join with the said Respondent *William Vade*, and the said other Appellants *Jasper Jones*, and *Frances* his Wife, in a Cross Bill, to establish the said Will of the said Sir *John Leigh*, of the 30th of *January 1736*. and the said Indentures of Lease and Release of the 9th and 10th of *September 1737*. And the Appellant, *Francis Leigh*, by his Answer expressly denied all the Fraud or Imposition charged against him.

Both the said Causes being at Issue in the Court of *Chancery*, and several Witnesses being examined therein, on both Sides, touching the Sanity of Sir *John Leigh*, and the said Will and Deeds, and other Matters put in Issue; both the said Causes came on to be heard together before the Right Honourable the Lord High Chancellor of *Great Britain*, on the 26th Day of *May 1742*. Whereupon his Lordship was pleased to Order that the said Causes should stand over to the 1st Day of Causes in the then next Term; and in the mean time any of the Parties, or their Solicitors, were to be at Liberty to inspect all the Deeds and Writings, relating to the Matters in Question, in the Custody or Power of any of the Parties, in the Hands of their respective Solicitors, or Clerks in Court to be ascertained by the Affidavit of the respective Parties, and such of the Deeds and Writings, as any of the Parties should give Notice of were to be produced at the further hearing of the said Causes.

Pursuant to the said Order, all the Deeds and Writings were produced and inspected on both Sides, and although the said Plaintiffs had by their Bill charged as aforesaid, that such Recoveries as were suffered by Sir *John Leigh*, between his Marriage and his Death, were transacted in a fraudulent Manner; and that Sir *John Leigh* did not know the Nature and Effect thereof, or what he was about. Yet afterwards on the 4th of *June 1742*. on the Motion of the said Plaintiffs, in the Original Cause, and without giving any Notice to, or hearing the Appellant *Francis Leigh*, and on hearing the said Respondent *Thomas Wildman*, only another Order was made in the said Original Cause, upon the Submission thereto of the said Respondent *Thomas Wildman*, upon being paid his Bill of Costs, and on the Plaintiffs submitting to pay him the same; that the said Respondent *Thomas Wildman* should forthwith carry into the Office of Mr. Prothonotary *Thomson* in *Lincoln's Inn*, all the Rolls, Writs, Entries, and other the Proceedings by him taken out and detained of the three Common Recoveries therein mentioned. To the End that the same might be filed upon Record, according to the usual Course of Proceedings in the said Court of *Common Pleas*, touching such Recoveries, and that the said Respondent *Wildman*, should proceed to perfect the said Recoveries, according to the Course of the said Court of *Common Pleas*.

Soon afterwards the said Respondent *Thomas Wildman*, in obedience to the last mentioned Order, passed all the said three Recoveries through the several Offices, and procured the same to be entered on Record, and perfected, as if really passed in *Easter Term 1737*. and in the Life-time of the said Sir *John Leigh*, and the same Purport to be three several Common Recoveries suffered by the said Sir *John Leigh*, of all his Real Estates in the said three several Counties of *Surry*, *Kent* and *Middlesex*.

On the 28th of *June 1742*. both the said Causes came on again, and were heard together before his Lordship; whereupon his Lordship was pleased to declare that the said Deeds of Lease and Release of the 9th and 10th of *September 1737*. were procured from the said Sir *John Leigh* the Son, by Fraud, Imposition and Circumvention, and by means of the undue Influence obtained by the Respondent *Vade*, over the Weakness of the said Sir *John Leigh* the Son, and that the same ought to be set aside, and did therefore Decree the same accordingly, and that the Cross Bill should stand dismissed with Costs. And in the said Original Cause decreed, that the said Deeds should be set aside, and delivered up to be cancelled, and that the said Appellant *Francis Leigh*, and the said other Appellants *Jasper Jones* and *Frances* his Wife, and the other Defendants should by proper Deeds, Conveyances, and other Assurances in the Law, as the Master should think fit, convey the Manors and Premises in Question to the Plaintiffs *Mary Bennett* and *Anne Spencer*, the Heirs at Law of the said Sir *John Leigh* and their Heirs; and that the Appellant *Francis Leigh*, and the said other Appellants *Jasper Jones*, and *Frances* his Wife, and the said Respondent *William Vade*, should deliver the Possession of the said Estates to the Plaintiffs, and should account for the Rents and Profits thereof, and for the Monies raised by the Sale of any Wood or Timber, since the Death of the said Sir *John Leigh*, and should pay one Moiety thereof to the Plaintiffs *Bennett* and his Wife; and the other Moiety thereof to the said Plaintiffs *Spencer*, and his Wife, and that all the Deeds and Writings, relating to the said Estates should be produced before the said Master on Oath, and deposited with him for the equal Benefit of the Plaintiffs, and that the Appellant *Francis Leigh*, and also the said other Appellants *Jasper Jones*, and *Frances* his Wife, and the said Respondent *Vade*, should be restrained from receiving any of the Rents and Profits of the said Premises for the future, and from cutting down any Wood or Timber from off the same; and the said Decree was to be binding against the Respondent *Richard Leigh*, and *Jasper Leigh Jones*, who are Infants, unless they being served with Subpoenas to shew Cause against the same, should within six Months after they should attain their Ages of Twenty One Years, shew good Cause to the contrary; and the said Plaintiffs were quietly to hold and enjoy the Premises against the said Infants in the mean time, but the said Decree was to be without Prejudice to any Remedy or Relief, which any of the Creditors of the said Sir *John Leigh* might hereafter seek by Virtue of the Proviso in the said Settlement

Easter Term 1739, Bill by *Bennett* and Wife, and *Spencer* and Wife, the Heirs at Law.

Charge in the Bill, that Sir *John Leigh*, the Son was insane.

And that all the Recoveries suffered by him, after his Marriage were obtained by Fraud and Imposition; and that he did not understand the Nature or Effect thereof. Prayer of the Bill.

Appellant *Leigh* by his Answer expressly denied all the Fraud or Imposition charged against him.

26th of *May 1742*, first Hearing and Order then made to produce Deeds in Writings.

4th of *June 1742*, Order for *Wildman* to perfect the three common Recoveries.

In *June 1743*, the three Recoveries passed and recorded.

28th of *June 1742*, second Hearing and Decree.

The Lease or Release of the 9th and 10th of *Sept. 1737*, set aside.

is to be without " tlement of the 10th of September 1737, for raising Money for Payment of the said Sir John Leigh's Debts. Prejudice to any " And it was further ordered, that the said Respondents *Vade* and *Wildman* should pay to the Plaintiffs their Remedy the Cre- " Costs of that Suit to that Time; and that the said Plaintiffs should pay to the said *Thomas Leigh* his Costs ditors of Sir John " of that Suit, and that those Costs should be added to the Plaintiffs own Costs, and be paid to them by the Leigh, the Son, " said Respondents *Vade* and *Wildman*, and the Consideration of subsequent Costs, and all further Directions might have under " were reserved till after the Master should have made his Report." And that Settlement.

The said *Francis Leigh*, being afterwards served with a Writ of Execution of the said Decree delivered up to the Respondents *Bennett* and *Spencer*, and their Wives, the Possession of that Part of the Estate in Question, which he had entered upon, and produced upon Oath all Deeds and Writings before the said Master.

The Will of the said Sir John Leigh the Father, referring only to the Settlement, without specifying the particular Uses and Limitations thereof, or the Manors or Lands therein comprized; and the Appellant *Francis Leigh*, having never seen the said Settlement, or any Copy thereof, and being ignorant of the Limitations and Contents thereof, and what was become of the said Settlement, did not know whether the Uses and Estates therein contained were determined, or whether the Estates devised by the said Will of the said Sir John Leigh the Father were fallen into Possession, or what particular Right or Title the Appellant *Francis Leigh*, could then claim under the said Will. But after the making of the said Decree, and not before, the Appellant *Francis Leigh*, first discovered where one Part of the said Settlement was, and got the same into his Possession, and thereby first discovered what the Limitations were, and what Lands were comprized therein, and that the Limitations were all determined on the Death of the said Sir John Leigh the Son, without Issue, (the said *Wolley Leigh*, dying in the Life-time of the said Sir John Leigh the Son, without Male) so that the Appellant *Francis Leigh*, was entitled, as aforesaid, to all the Manors and Premises in the County of *Surry*, and to one Moiety of the Lands in *Kent*, being Gavelkind in the same Settlement comprized, (and which are the greatest Part of the said Estates now in Question) in Case the said Remainder in Fee, devised as aforesaid by the said Sir John Leigh, the Father, to the said Sir *Francis Leigh*, was not sufficiently and effectually barred by the said Sir John Leigh the Son.

The Appellant *Francis Leigh*, having thus after the Decree discovered the said Settlement, and his said Right and Title under the same, and under the Will made by the said Sir John Leigh the Father as aforesaid, (to wit) on the 22d Day of October 1742. preferred his Petition to the Right Honourable the Lord High Chancellor of Great Britain, thereby amongst other Things setting forth, that the Appellant *Francis Leigh*, was advised to exhibit his Bill in the said Court of Chancery, to have the Benefit of his said Right and Title to the said Estates, under the said Settlement and Will, made by the said Sir John Leigh the Father as aforesaid; and that as the Appellant *Francis Leigh's* Title, was a Title at Law, he hoped he should have an Opportunity to try the Validity of the same at Law; and thereby prayed that his Lordship would please to rehear the said Original Cause as to the said Appellant *Francis Leigh*, and that he might be at Liberty to exhibit such New Bill as aforesaid, and that the said Original Cause might be reheard at the same time that the Cause on such New Bill should come on to be heard, and that in the mean time the Execution of the Decree, as to the Conveyance thereby, directed to be executed by the Appellant *Francis Leigh* might be suspended.

And afterwards on the 11th Day of December 1742, the Respondent *Richard Leigh* preferred his Petition in the said Original Cause to the said Lord High Chancellor, suggesting (among other Things) that the said Manor, Lands, and Premises in *Kent* are Gavelkind, and that he is one of the Grandsons, and one of the Coheirs, according to the Custom of Gavelkind, of the said Sir *Francis Leigh*, and as such entitled to one Moiety of the said Manor, Lands, and Premises, in the said County of *Kent*, by virtue of the said Settlement and Will, made by the said Sir John Leigh the Father, and that a proper Defence had not been made in the said Cause on his Behalf, and thereby prayed that his Answer put into the said Original Bill might be taken off the File, and that he might be at Liberty to put in a new Answer to the said Original Bill, and be at Liberty thereby to insist on and put in Issue his said Right, Title, and Claim, by virtue of the last mentioned Settlement and Will of the said Sir John Leigh the Father, and such other Matters as he should be advised might be relevant thereto, or for his Benefit in the said Original Cause, and to examine his Witnesses in Support thereof; and that in the mean time all Proceedings on the said Decree so far as might affect the said Respondent *Richard Leigh*, or his Interest, might be stayed.

Both Petitions were heard together before the said Lord High Chancellor on the 23d of March 1742; and on the Petition of the said Respondent *Richard Leigh*, his Lordship was pleased to order " That the said Respondent *Richard Leigh* should be at Liberty to amend his Answer to the said Original Bill, or to put in a new Answer thereto, as he should be advised, and that he should have Time till the last Day of the then next Term for that Purpose; and on the said Petition of the Appellant *Francis Leigh*, his Lordship was pleased to order that the Performance of that Part of the said Decree whereby the said Appellant *Francis Leigh* is decreed to join in a Conveyance of the said *Kentish* Estate, and of so much of the Estate in the County of *Surry*, as is comprized in the Deed leading to the Uses of the Common Recovery, suffered by the said Sir John Leigh the Son, in Hilary Term 1718, of Lands in the County of *Surry*, should be suspended, as to the Appellant *Francis Leigh*, until the Cause should come on again to be heard on the new Defence to be made by the said Respondent *Richard Leigh*, or the said Court of Chancery should make other Order to the contrary: And as to all other Matters contained in the said Petition of the said Appellant *Francis Leigh*, his Lordship thereby ordered that his said Petition should be dismissed.

Pursuant to the last mentioned Order, the said Respondent *Richard Leigh* hath put in a new Answer to the said Original Bill, and thereby (amongst other Things) put in Issue, and insisted on his said Right and Title under the said last mentioned Settlement and Will of the said Sir John Leigh the Father: And the Plaintiffs have replied to such Answer, and the said Original Cause remains to be heard thereon.

The Appellant *Francis Leigh* apprehending himself to be aggrieved by the said Order of the 4th of June 1742, and by the said Decree of the 28th of June 1742, and also by the said Order of March 23, 1742, respectively, he hath appealed therefrom to your Lordships for the following Reasons (amongst others)

REASONS against the ORDER of the 4th of June, 1742.

- I. FOR that the said Order was made upon the Respondent *Wildman's* Submission thereto, on being paid his Bill of Fees by the said Plaintiffs, and upon the Plaintiff's Submission to pay the same, without giving Notice to or hearing the Appellant; and the Recoveries thereby ordered to be perfected by the Respondent *Wildman* were such as the said Sir John Leigh never thought fit to perfect in his Life-time, or to declare any Uses thereof, and it might be of very ill Consequence to Families, if Proceedings towards a Recovery, not prosecuted by any Declaration of Uses, but neglected and forgotten by the Party in his Life-time, should several Years after his Death be revived, completed, and then insisted upon as a Revocation of his Will, which seems to have been the Design of the Respondents the Heirs at Law in applying to have them so perfected, and the Use they made of this Order in the present Case.
- II. For that the Plaintiffs not only charge in their Bill that Sir John Leigh was insane; and that the Will and Settlement were obtained by Fraud, but also charge that the said Recoveries were transacted in the same fraudulent Manner, without any Directions from Sir John Leigh; and that he did not execute any Warrant of Attorney, or knew the Nature and Effect thereof; and as the Deeds are set aside for Fraud and Imposition, it seems inconsistent that the Recoveries which are charged to be Part of the same Transaction, and are under the like Circumstances should be established and carried into Execution by a Court of Equity 5 Years after the Death of Sir John Leigh, and then made use of to revoke his Will.

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REASONS *against* the DECREE of the 28th of June, 1742.

- I. IN Case the Deeds of the 9th and 10th of September 1737, ought to be set aside for the Reasons mentioned in the Decree, yet it ought to be done in such a Manner as not to affect any other Right which the Appellant *Francis Leigh* may have to the Estate under a different Title, and the Appellant (who never heard of the Deeds till after the Decease of Sir *John Leigh*) ought not to be decreed to do more than to divest himself of any Right and Title which was conveyed to him by the Force of these Deeds, but as the Decree has directed the Appellant not only to deliver up the Deeds and Writings, and account for the Profits, but also to convey the Estate to the Respondents the Heirs at Law, the Appellant must thereby totally exclude himself from all Right which may be derived to him under the Wills of Sir *John Leigh* the Son, and even under the Will of Sir *John Leigh* the Father, which is a distinct and independent Title: Whereas the Appellant humbly submits that at most he ought not to be decreed to do more than to release to the Respondents the Coheirs who are in Possession of the Estate, all the Right and Title which was vested in him by the said Settlement.
- II. It is apprehended that a Court of Equity has no Jurisdiction to set aside a Will, nor has this Decree done so in express Terms; and yet, by the Direction to the Appellant to convey the Estate to the Respondents the Coheirs, it has in effect done the same Thing, and will for ever preclude the Appellant from trying his Title at Law, under the Wills either of the Father or Son; and it would be an extreme hard Case, if the Appellant, who, if the Deeds of 1737 had never been made, would have had a Right to try his Title at Law under these Wills, should be debarred of that Right by the Consequences of a Decree for setting aside those Deeds which were obtained unknown to the Appellant; and it is hoped it is not a sufficient Answer to say that the Recoveries not perfected till under the Order of the 4th of June 1742, and obtained in the Manner charged in the Bill, are to be deemed a Revocation of the Will made in Favour of the Heir-Male of the Family, without leaving him a Right to try that Question.

As to the Order of the 23d of March 1742, the Appellant's Title under the Will of Sir *John Leigh* the Father is a distinct Right which the Appellant claims independent of Sir *John Leigh* the Son, and as the Appellant for Want of the Settlement of 1684, and a Knowledge of the Uses thereof, and whether they were then determined, and what were the particular Lands therein comprised, was ignorant in what Manner, in what Event, and when the said Will could take Effect: And as the Appellant did not discover the Settlement till after the Decree (as appears by his Affidavit for that Purpose read upon the Petition) And as the Respondent *Richard Leigh* has Liberty under the said Order to make a new Defence under the same Title, the Appellant hopes it is just that he should also have the Liberty to introduce and insist on this Title by a New Bill and Rehearing, or else that the present Decree shall be so varied as to leave the Appellant at Liberty to try his Title at Law under the said Will, and the Point of Law, whether the Remainder devised by the Will of Sir *John Leigh* the Father has been duly barred by the Son, will then be properly determined at Law.

Wherefore, and for divers other Reasons, the Appellant *Francis Leigh*, humbly hopes that the said Orders and Decrees abovementioned to be appealed from, shall be respectively reversed or varied in the Particulars abovementioned, and the said three Common Recoveries vacated; and that the Appellant *Francis Leigh* shall be at Liberty to try his Right and Title to the said Estates and Premises at the Common Law, or that he shall have such other Relief in the Premises, as to their Lordships shall seem meet.

FRANCIS CHUTE.

JOHN BROWNE.

Jones and his Wife.

Appellants.

Bennett and *Francis Leigh*,
Esq; and others, } Respondents.

AND

The said *Francis Leigh*,

Appellant.

The said *Bennet*, and others, Respondents.

The CASE of *Francis Leigh*, Esq; one
of the Respondents to the Original Ap-
peal, and Appellant in the Crois Appeal.

To be heard at the Bar of the House of Lords,
on Wednesday the 12th of December, 1744.

